

**CALIFORNIA COASTAL COMMISSION**

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**W10b**

Filed: 10/15/04  
180<sup>th</sup> day: 4/13/05  
Staff: JB-SC  
Staff report prepared: 2/2/05  
Hearing date: 2/16/05  
Hearing item number: W10b

**COASTAL DEVELOPMENT PERMIT APPLICATION**

**Application number** .....3-04-059, Strand Way Water Main Replacement & Temporary Roads

**Applicants** .....Oceano Community Services District

**Project location** .....Strand Way, between McCarthy Ave. and Utah Ave., in Oceano, San Luis Obispo County.

**Project description** .....Replace an existing 4" water main with an 8" water main (approx. 1360 linear feet) on Strand Way. Project includes installation and removal of approx. 900 feet of flexible matting to provide temporary vehicular access within Strand Ave. right-of-way (paper street) from Juanita Ave. south to Sandpiper Lane; alley between Strand Way and Laguna Dr.; Sandpiper Lane west of alley between Strand Way and Laguna Dr.; Surf Ave. between alley and Laguna Dr.

**Local approval**.....Approved with Conditions.

**File documents**.....California Coastal Act; San Luis Obispo County file No.DRC2004-00012; *Cultural Resource Investigation of Temporary Road Locations on the Strand, Sandpiper, and Surf Ave., Oceano* (John Parker, PhD, RPA, June 7, 2004); *Biological Survey Re: Placement of water main for OCSD* (Mike McGovern, Ph.D., June 2, 2004).

**Staff recommendation** ...Approval with Conditions

**Summary:** The Oceano Community Services District (OCSD) proposes to replace an existing 4" water main with an 8" water main (approx. 1360 linear feet) within the public right-of-way of Strand Way in Oceano, San Luis Obispo County. During replacement of a portion of the water main, temporary access roads will be needed to accommodate normal and emergency response traffic in the surrounding neighborhood. The access roads involve installing and later removing approximately 900 feet of flexible matting to provide detours around the project at four locations (see Exhibit 2).

The temporary access roads are proposed on coastal dune lands considered to be environmentally sensitive habitat areas (ESHA) under the Coastal Act. Section 30240 of the Coastal Act calls for the protection of ESHA and requires development to avoid significant disruptions to habitat values and recreation areas. Impacts to the dunes are related to the removal of vegetation and reshaping the dune landform for installation of the temporary access roads. Although the habitat value of the dune areas



**California Coastal Commission**  
**February 2005 Meeting in Monterey**

Staff: J.Bishop Approved by:

affected by the project are mostly degraded, they are important components of the larger Nipomo Dunes complex and have the potential to support rare plant and animal species. For example, the Western snowy plover, listed by the U.S. Fish and Wildlife Service as threatened, nests in nearby locations and has the potential to occur within the project area. The project site also has the capacity to support rare dune plants such as the Surf thistle and Beach spectacle pod, both of which are considered threatened by the California Department of Fish and Game. In addition, construction activities will temporarily interfere with the public's ability to access the beach.

Staff recommends that the Commission **approve** the project **with conditions** that seek to protect both the recreational and habitat values of the project area consistent with Coastal Act Section 30240. To minimize temporary impacts on beach access and recreation, the conditions limit construction activities to weekday business hours and require public access to be provided after normal working hours. In addition, the conditions require the use of signage during construction to redirect the public to the closest open vertical coastal access point. To protect biological resources, construction is prohibited during Snowy Plover nesting season (March through September). The conditions require that a qualified biologist survey the project area for rare plants and animals prior to initiating construction, and restrict construction activities as necessary to protect such resources. To avoid potential impacts to adjacent habitat areas, erosion and sedimentation control measures are required during ground disturbing activities. The conditions also require disturbed dune areas to be restored and re-stabilized with native plants to enhance the habitat values of the project site following construction.

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## I. Staff Recommendation on CDP Application

The staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development subject to the standard and special conditions below.

**Motion.** I move that the Commission approve Coastal Development Permit Number 3-04-059 pursuant to the staff recommendation.

**Staff Recommendation of Approval.** Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution to Approve a Coastal Development Permit.** The Commission hereby approves the coastal development permit on the ground that the development as conditioned, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the coastal development permit complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the amended development on the environment.

## II. Conditions of Approval

### A. Standard Conditions

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.



## B. Special Conditions

**1. Scope of Permit.** This permit authorizes, subject to the following Special Conditions:

- a) Installation of 1260 feet of 8" PVC water main and associated hydrants and water service lines within Strand Way right-of-way using conventional construction and trenching techniques;
- b) Grading of existing rights-of-way and compacting temporary roadbed for installation and removal of approximately 900 feet of flexible matting to provide temporary access detours at four locations including: (1) The Strand from Juanita south to Sandpiper; (2) Sandpiper Lane just west of the alley between Strand Way and Laguna; (3) Southern portion of the alley north of Surf Ave. and its intersection with Surf Ave., and (4) Surf Ave. between the alley noted above and Laguna Drive.
- c) Restoration and re-stabilization of disturbed dune areas with native vegetation.

The Permittee shall undertake development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

**2. Protection of Public Access and Recreation Opportunities.** To minimize impacts on beach access and recreation, construction shall be limited to non-holiday weekdays and normal working hours. Construction shall be pursued as expeditiously as possible and shall be limited to a 30-day construction window for each phase of the project. Should any phase of development require additional time, an amendment to this permit is required.

The permittee and construction operators shall be responsible for ensuring public safety, among other means, by providing adequate construction personnel to direct beach users away from the construction area or temporarily staking the construction area with orange safety netting. Signage during construction shall be installed in visible areas to redirect the public to the closest open vertical coastal access point. Unimpeded public access to the beach shall be provided following normal working hours.

**3. Protection of Sensitive Biological Resources.** IMMEDIATELY PRIOR TO CONSTRUCTION, AND ON A CONTINUOUS BASIS DURING CONSTRUCTION, a qualified biologist shall survey the project area for rare or endangered plant and animal species. Construction activities, including installation and removal of temporary detours, shall be prohibited from any area that contains rare or endangered plant species. No development shall be allowed to occur if there is an active Snowy plover nesting site within 100 feet of the project area.

PRIOR TO COMENCEMENT OF EACH PHASE OF THE PROJECT, a qualified biologist shall complete a baseline resource assessment of the current physical and ecological condition of the dune areas to be disturbed by temporary access detours. The assessment shall include a description and



map showing the topography (contours and elevations) of existing dunes, as well as the type, location, and coverage of existing vegetation.

IMMEDIATELY FOLLOWING COMPLETION OF EACH PHASE OF THE PROJECT, the applicant shall restore and revegetate areas disturbed by the temporary detours at minimum to a pre-project condition. Restoration shall achieve, at minimum, pre-construction a) dune contours and elevations; and b) vegetative cover. The applicant shall use native non-invasive vegetation to re-stabilize the dune area and minimize additional sand migration.

WITHIN 30 DAYS FOLLOWING COMPLETION OF EACH PHASE OF THE PROJECT, the applicant shall provide for Executive Director review and approval written and photographic evidence showing completion of dune restoration and re-stabilization work for each project phase. The evidence must include an evaluation of whether the dune areas have been restored to a pre-project or better condition. Written evidence is also required showing that dune restoration and re-stabilization has been coordinated with State Parks and that there are no conflicts with current State Park dune planting and restoration efforts in the vicinity of the project site.

4. **Protection of Coastal Water Quality.** PRIOR TO CONSTRUCTION, erosion and sedimentation control measures, including but not limited to fiber rolls and silt fencing, shall be installed to avoid impacts to wetland areas near Sandpiper Lane, Surf, and Laguna Avenues. Wetland setbacks shall be maintained in excess of 34 feet and 84 feet. All construction vehicles and equipment shall not come into contact with ocean waters or wetlands, and shall be cleaned and maintained at an offsite location to prevent the discharge of any harmful or foreign materials in the lagoon, beach, or in the ocean.
5. **Archaeological Monitor.** A qualified archaeological monitor and Native American representative, approved by the Executive Director PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, shall be present during any construction or pre-construction activities that involve ground disturbance. Should archaeological resources be discovered at the project site during any phase of construction, the permittee shall stop work until a mitigation plan, prepared by a qualified professional archaeologist in coordination with interested Native Americans, is completed and implemented. Prior to implementation, the mitigation plan shall be submitted for review and approval by the State Historical Preservation Office and for review and approval by the Executive Director of the Commission. The plan shall provide for reasonable mitigation of the archaeological impacts resulting from the development of the site, and shall be fully implemented. A report verifying compliance with this condition shall be submitted to the Executive Director for review and approval, upon completion of the approved mitigation.

### III. Recommended Findings and Declarations

The Commission finds and declares as follows:



## A. Project Description and Location

The Oceano Community Services District (OCSD) provides water and fire protection to the Oceano Beach Subdivision, in Oceano, San Luis Obispo County. The OCSD proposes to replace an existing 4" diameter asbestos-cement water main under Strand Way with a new 8" PVC line. Due to the small diameter of the existing 4" pipe, fire flows are inadequate at the southern end of Strand Way. The project entails replacement of approx. 1600 linear feet of water main and associated fire hydrants and water services on Strand Way. The water main will be constructed within the public right-of-way under Strand Way using conventional construction equipment and trenching techniques. Construction of the entire project will take less than 1 month, and will take place in three phases (Phase 1 – Juanita to Sandpiper; Phase 2 – Sandpiper to Surf Ave.; and Phase 3 – Surf Ave. to York).

During replacement of a portion of the water main the only feasible access to the surrounding neighborhood (through Strand Way) will be closed during working hours. To overcome this obstacle, temporary roads are to be installed around the project site to accommodate vehicular access. The temporary roads involve grading and compacting a 20-foot wide roadway. The temporary road surface consists of approximately 900 linear feet of flexible panel matting that overlap, interlock, and provide stable surface for wheeled traffic. After the water main is installed and Strand Way is re-opened to traffic, the temporary road surface will be removed. Installing and removing flexible matting to provide temporary detours around the water main replacement project will occur at 4 locations:

1. The Strand from Juanita Ave. south to Sandpiper Lane (16,304 sq.ft.).
2. Sandpiper Lane just west of the alley between Strand Way and Laguna Drive (1,681 sq.ft.).
3. The southern portion of the alley north of Surf Ave. at intersection with Surf Ave. (3,367 sq.ft.).
4. Surf Ave. between the alley noted above and Laguna Drive (3,913 sq.ft.).

The temporary access roads provide a necessary public health and safety function during construction. As described previously, Strand Way provides the only access in and out of the surrounding neighborhood. Without the temporary access roads, residents and visitors will be unable to access their homes. More critically, medical, police and fire response to the neighborhood would be severely compromised should the temporary access roads not be allowed. The temporary roads are needed for roughly seven to ten days during each phase of development and represent the only feasible solution to this unique circumstance.

The project is located on dune lands facing either the Pacific Ocean to the west or the Oceano Lagoon to the east. The primary land use surrounding the project is residential, with some "vacation homes" as second homes seasonally rented to visitors. Most of the homes are single-family residences. Surrounding this residential neighborhood the land use is recreation and open-space. State Parks property borders the project on the west, and County owned property containing Oceano lagoon borders the project to the east. This section of dunes is a component of the Nipomo-Oceano dune complex, one of the largest coastal dune fields in coastal California, which begins at Pismo Creek near the south end of the City of Pismo Beach and extends south approximately 20 miles to Point Sal in Santa Barbara



County, just south of the Santa Maria River. The older, heavily vegetated, stabilized dunes extend as much as 11 miles inland. The younger, less vegetated, more active dunes extend inland up to about 1.5 miles and cover approximately 20 square miles.

## B. Coastal Development Permit Determination

### 1. Environmentally Sensitive Habitat Areas (ESHA)

#### A. ESHA Policies

Coastal Act Section 30107.5 defines “Environmentally Sensitive Area” to mean:

*“any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.”*

Coastal Act Section 30240 states:

*(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

#### B. ESHA Analysis

The Coastal Act is very protective of sensitive resource systems such as wetlands, dunes and other environmentally sensitive habitat areas (ESHA). Almost all development within ESHA is prohibited, and adjacent development must be sited and designed so as to maintain the productivity of such natural systems. In particular, Coastal Act Section 30240(a) calls for the protection of ESHA and requires development located in an ESHA to cause no significant disruption of habitat values and to involve uses that are resource dependent.

The project is located on dune lands facing either the Pacific Ocean to the west or the Oceano Lagoon to the east. Coastal dunes are a limited resource of statewide significance that provide important habitat for rare and endangered species. They are also fragile ecosystems that can be “easily disturbed or degraded by human activities and developments.” Coastal dunes thus qualify as ESHA as that term is defined in section 30107.5 of the Coastal Act. Although dunes may at certain times or locations appear barren and devoid of life, this can quickly change when temperature, moisture, and disturbance conditions are right. Native dune plants are superbly adapted to life in the harsh dune environment that is subject to periodic disturbance; wind blown sand changes the contours of the ground and buries vegetation; rainfall rapidly percolates out of reach; and, lacking a distinct topsoil horizon, nutrients are quickly exhausted. Accordingly, the particular locations of dune species change over time as site conditions change. For this reason the entire dune surface, not just the particular locations of sensitive plants and animals at one point in time, must be considered and protected as ESHA.



In addition to the larger Oceano Dunes complex, two sensitive wetland habitat areas have been identified within 100 feet of the proposed project. A wetland delineation was conducted in January 2003 over the parcel immediately adjacent to this project area along Surf Avenue between the alley and Laguna Drive (Hacker and Ballantyne, 2003). A small wetland (64 square feet) was delineated within 34 feet of the alleyway to be used for a temporary detour (from Laguna Dr. to Surf through the alley to Sandpiper Ln.). Another temporary detour on Sandpiper Lane is within 84 feet of the greater Oceano Lagoon (See Exhibit 3). Oceano Lagoon is identified as an environmentally sensitive habitat area under the County's certified LCP.

#### Alternatives

A number of alternatives were considered to avoid potential impacts to dune and wetland habitat caused by installation of the temporary access detours. As shown below, a number of alternatives were studied. The applicant selected Alternative B as the preferred alternative because the others were deemed infeasible or more environmentally damaging. The alternatives analyzed are as follows:

Alternative A – Build a temporary road on a vacant private lots between Juanita and Sandpiper. This alternative was dismissed because it would bring construction and traffic too close to sensitive habitat areas. No wetland “buffer” would be provided with this alternative causing significant habitat disruptions. Additionally, a rare plant (Blochman's leafy daisy – *Erigeron blochaniae*) was found in this location.

Alternative B (Selected) - Build a temporary road on public right-of-way on Juanita and Sandpiper and The Strand. Use the alley between Strand Way and Laguna Drive from Sandpiper land to Surf Avenue and also to Laguna Drive.

Alternative C – Build a temporary road on the northern levee of Arroyo Grande Creek between the Strand alley and Guiton's crossing. When construction is complete, install locking gates on each end so the road can be used for emergency access. The steep drop on either side of levee made this alternative problematic for first responder fire fighting vehicles. In addition, there is an ongoing issue about ownership of the levee and legal uses over access that have yet to be resolved. Finally, the structural integrity of the levee at some locations remains a concern.

Alternative D – Place an emergency vehicle within the area cut off by construction, require Strand to be re-opened periodically during each work day, and require the contractor to demonstrate an ability to re-open the road within 15 minutes of receiving emergency notice. This alternative was considered expensive and unworkable. Simulations were conducted by the fire department, which revealed that the road could not be opened fast enough to meet police, fire, and emergency response requirements.

In addition to the above referenced alternatives, Commission staff had numerous discussions with the applicant, engineers, and fire department over all possible alternatives. Other alternatives, including partial road closure on Strand Way and/or combinations of the current alternatives, were analyzed and later dismissed as infeasible. Thus, the Commission can concur that Alternative B is the least environmentally damaging feasible alternative.



Under the provisions of section 30240(a) a project located in an ESHA must satisfy two tests: 1) the project may not cause any “significant disruption of habitat values,” and 2) if the project involves a “use” of the ESHA, it must be a use that is dependent on the ESHA resources.

#### No Significant Disruption Test:

The proposed temporary detours will impact roughly 25,265 square feet (0.58 acre) of ESHA, a relatively insignificant amount compared to the overall spatial extent of the dune resource in this area. Nonetheless, in order to accommodate the temporary detours, sand dunes and vegetation will need to be disturbed. The portion of the detour on The Strand, between Juanita Ave. and Sandpiper Lane, will require the removal of existing, small sand dunes and vegetation. The extension of the alley between Surf and Sandpiper will require the filling of low areas and the removal of vegetation.

No sensitive species have been identified as occurring on the particular portion of dunes where the project is proposed. However such species do occur at other sites nearby. For example, the Western Snowy Plover listed as a threatened species by the U.S. Fish and Wildlife Service, nests in barren foredunes just to the south across Arroyo Grande Creek. Plants considered threatened by the Department of Fish and Game such as, surf thistle (*Cirsium rothophilum*), beach spectaclepod (*Dithyrea maritima*), Gambell’s watercress (*Rorippa gambellii*), and Nipomo Lupine (*Lupinus nipomoensis*) are known to occur within a close proximity of the project site.

While the project site has the capacity to support such species, past and current uses have diminished opportunities for native dune plants and animals to become established in this area. First, past manipulation of the dunes in this area may have limited opportunities for seeds to germinate, and any seeds that do germinate may not have an adequate chance to establish a viable community. Second, the project area is a popular location for local residents to access the beach and enjoy active beach recreation activities, which represents a level of use and disturbance that may preclude native species from becoming established. Third, the use of the shoreline for vehicle recreation may limit use of the area by species like the Western snowy plover.

Nevertheless, there is the potential for rare and endangered dune plant and animal species to be present in the project area during construction activities. To protect these resources as required by Coastal Act Section 30240, Special Condition 3 requires a qualified biologist to survey the project area for rare or endangered plant and animal species immediately prior to the commencement of construction, and on a continuous basis during construction. This will be particularly important during construction and use of the temporary access detours on Strand and near the Oceano Lagoon. In the event that rare or endangered species are identified as occurring within the project area, construction activities are prohibited from that area, and temporary construction fencing must be erected around the plants or animals to avoid disturbance. Special Condition 3 prohibits construction all together if there is an active Snowy plover nesting site within 100 feet of the project area.

While these measures will protect sensitive biological resources during construction, the manipulation and destabilization of the dunes is inconsistent with Coastal Act policy 30240 prohibiting significant disruption of sensitive habitats. Although the biological value of the project site has been degraded, it



still represents an important component of the Nipomo-Oceano Dunes complex that could support the survival and recovery of the areas rare and unique natural resources. The applicant proposes only to install wind fencing to reestablish the dunes and lessen the opportunity for the wind to move the sand onto Strand Way. This measure alone does not adequately protect the dune resource. Therefore, Special Condition 3 also requires these habitat values to be reestablished through restoration of the dunes to at least pre-development conditions and a dune re-vegetation effort to re-stabilize the sand dunes and avoid additional sand migration. A qualified biologist is required to conduct a baseline resource assessment of dune areas to be disturbed during construction. The baseline assessment will allow for the establishment of performance criteria to assure that dune topography and vegetative cover is restored and revegetated to at minimum a pre-project condition or better.

To avoid impacts to wetland areas near Sandpiper Lane, Surf, and Laguna Avenues, Special Condition 4 requires erosion and sedimentation control measures to be installed prior to any ground disturbing activities. Wetland setbacks shall be maintained in excess of 34 feet and 84 feet. All construction vehicles and equipment shall not come into contact with ocean waters or wetlands, and shall be cleaned and maintained at an offsite location to prevent the discharge of any harmful or foreign materials in the lagoon, beach, or in the ocean. As conditioned, the temporary project will not significantly disrupt the dune ESHA.

#### Resource Dependant Use Test:

In this case, the proposed temporary access roads are not a use of ESHA that is required under the terms of Section 30240(a) of the Coastal Act to be “resource dependant.” First, as noted above, the aerial extent of the disruption to the dune resource that will occur as a result of this project (approximately 25,000 square feet or a little over ½ acre) is very limited relative to the overall aerial extent of the dune resource in the area of the project. Second, as also noted above, the disturbance to the dune resource will be of an extremely short duration lasting no more than 30 days at most. Finally, each phase of the project will be followed by restoration and re-stabilization of the disturbed dune areas, including re-establishment of pre-disturbance dune contours and elevations and planting with native vegetation, which will serve not only to restore but actually to enhance the quality and habitat values of the dune resource relative to pre-project conditions. In light of these factors, the disturbance of ESHA that will occur as a consequence of the implementation of the proposed project is not a “use” of ESHA for purposes of section 30240(a).

#### C. ESHA Conclusion

The proposed project presents a unique set of circumstances. As discussed previously, installation of a new water main and the use of temporary access detours are necessary to protect the public’s health and safety. This includes the ability of the community to provide essential fire and medical support to the area in question. There is no way to provide such critical health and safety needs without a temporary impact to ESHA. Although vehicular access is not a type of use typically allowed in an ESHA, in this case, the project will not cause a significant disruption of environmentally sensitive habitat areas because no especially rare or valuable biological resources have been identified as occurring within the



project area, and because the permit has been conditioned in a manner that prevents project implementation from disrupting any significant biological resources that may become established. Moreover, impacts will be temporary and the restoration and re-vegetation of disturbed areas with native plant species will provide an overall enhancement of the resource upon project completion. The project does not propose a permanent non-resource dependent use of ESHA as that term is generally understood for purposes of section 30240. Again, the Commission also acknowledges that there are no other feasible alternatives given the critical public health and safety needs of the community. Overall, as conditioned to assure no permanent disruption of ESHA, the project is consistent with Coastal Act Section 30240.

## 2. Coastal Access and Recreation

### a. Access and Recreation Policies

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea “shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3.” The proposed project is located seaward of the first through public road on the beach. Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:

***Section 30210:*** *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

***Section 30211:*** *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

***Section 30212(a):*** *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...*

***Section 30213:*** *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...*

***Section 30220:*** *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

***Section 30221:*** *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial*



*recreational activities that could be accommodated on the property is already adequately provided for in the area.*

**Section 30223:** *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Coastal Act Section 30240(b) also protects coastal access and recreation opportunities adjacent to parks and recreation areas such as the Oceano Dunes State Vehicle Recreation Area. Section 30240(b) states:

**Section 30240(b):** *Development in areas adjacent to ... parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

#### b. Access and Recreation Analysis

The project area is comprised of public lands (County road right-of-way) and is used for public access and coastal access and recreation, primarily by local visitors, vacation renters, and people living in the surrounding neighborhood. Most of the general public access occurs at the end of Pier Avenue, approximately a quarter mile north of the construction area. The project will have some negative impacts on coastal access and recreation opportunities, as described below.

In this case, beach access and recreation activities will be temporarily disrupted by the operation of heavy equipment and vehicles using the temporary access detours along the back beach area. However, this would be only a minor inconvenience of limited duration (7-10 days). Other vertical beach access points are located nearby and wide sandy beach areas that surround this area are available to the public for recreation. However, to minimize the impacts to access and recreation opportunities consistent with the Coastal Act, Special Condition 2 limits construction operations to non-holiday weekday periods. In addition, to ensure the safety of beach goers, Special Condition 2 also requires the provision of adequate construction personnel to direct beach users away from the construction area, or the installation of temporary orange safety netting to keep the public away from construction activities. Special Condition 2 also requires the use of informational signage that will direct beach users to the nearest vertical beach access area. Lastly, Special Condition 2 limits each phase of the project to 30 days. Should any phase of the project take additional time, an amendment to this permit is required and the project re-evaluated.

#### c. Access and Recreation Conclusion

The project has the potential to temporarily disrupt public access and recreation opportunities during construction activities. To minimize this impact, conditions have been attached to this permit that limit the timing of construction to non-holiday weekday periods only. To protect public safety, the permit conditions require to provision of construction personnel or temporary fencing to keep the public outside of construction areas. Signage is required to provide the public with directions to nearby access routes. Vertical access to the beach is to remain open to the public following normal business hours. With these conditions, the project is consistent with the Coastal Act access and recreation policies identified above.



### 3. Archaeology

#### a. Archaeology Policies

***Coastal Act Section 30244:*** *Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

#### b. Analysis

The Oceano community is an area of identified archaeological significance in the LCP. The Oceano area has a number of archaeological sites “including one large site that was occupied for over 5,000 years.” A Phase 1 archaeological surface survey and historical research was conducted for the unpaved portions of the project site (Robert Parker and Associates 2004). The field surface survey revealed no significant cultural or pre-historic resources within the project area. While it is possible that buried cultural remains exist under the wind-blown dune sands, it is unlikely that such material will exist within the top 2 to 5 feet that would be disturbed.

#### c. Conclusion

Because the area in general is archaeologically sensitive, Special Condition 5 requires a qualified archaeological monitor and Native American representative approved by the Executive Director to be present during construction or pre-construction activities that involve ground disturbance. If archaeological resources are discovered at the project site during any phase of construction, work must cease until a mitigation plan, prepared by a qualified professional archaeologist in coordination with interested Native Americans, is approved by the State Historical and the Executive Director of the Commission. The plan must provide for reasonable mitigation of the archaeological impacts resulting from the development of the site, and be fully implemented. Only as conditioned is the project consistent with Coastal Act Section 30244.

### 4. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. As detailed by the above findings, this project has the potential to adversely impact biological resources, archaeology, and public access and recreation opportunities.

The Coastal Commission’s review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate mitigations to address adverse impacts to said resources. Accordingly, the project is being approved



subject to conditions that will avoid significant adverse affects on biological resources, archaeological, and public access and recreation opportunities. Only as modified and conditioned by this permit will the proposed project not have any significant adverse effects on the environment within the meaning of CEQA.

